Oil, Chemical and Atomic Workers International Union, and its affiliate Local No. 7-103, AFL-CIO, CLC (DAP, Inc., a Subsidiary of Plough, Inc.) *and* James V. Coggin, Jr., attorney for DAP, Inc. Case 9-CB-5103

9 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 10 August 1983, Administrative Law Judge Julius Cohn issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the administrative law judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Oil, Chemical and Atomic Workers International Union and its Affiliate Local No. 7-103, AFL-CIO, CLC, Dayton, Ohio, its officers, agents, and representatives, shall take the action set forth in the Order.

[1] Member Dennis agrees that the Respondent violated Sec. 8(b)(1)(A) of the Act by fining employees Britton and Miller for providing a statement to the Company that resulted in a fellow employee's discharge for misconduct. However, rather than distinguish *Communications Workers Local 5795 (Western Electric)*, 192 NLRB 556 (1971), as did the judge, she would overrule it. In *Scofield v. NLRB*, 394 U.S. 423, 430 (1969), the Court stated:

> §8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.

In Member Dennis' view, a union rule that authorizes the fining of members for reporting a fellow employee's infraction of a proper plant rule does not reflect a "legitimate union interest," and is contrary to national labor policy, which favors the observance of valid rules governing the workplace.

Chairman Dotson and Member Hunter find that *Western Electric* is dissimilar to the case presented here. They therefore find it unnecessary to pass on the continued validity of *Western Electric* in this case.

DECISION

STATEMENT OF THE CASE

JULIUS COHN, Administrative Law Judge. This case was tried at Dayton, Ohio, on November 10, 1982. Upon a charge filed by James V. Coggin, Jr., attorney for DAP, Inc., on November 5, 1981, the Regional Director for Region 9 issued a complaint on March 17, 1982, alleging that Oil, Chemical and Atomic Workers International Union, and its affiliate Local 7-103, AFL-CIO, CLC, herein called the Respondent or the Union, violated Section 8(b)(1)(A) of the Act by imposing monetary fines on two of its members who were employed by DAP, Inc., a subsidiary of Plough Inc., herein called the Company. The Respondent has denied that it has violated the Act.

All parties were given full opportunity to participate, to produce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. The General Counsel and the Respondent submitted briefs which have been carefully considered.

On the entire record in the case, and from my observation of the witness and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company has been engaged in the manufacture of caulking and putty compounds at its Dayton, Ohio facility. During the 12 months preceding the issuance of the complaint, the Company, in the course of its operations, sold and shipped from its Dayton, Ohio facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Ohio. The complaint alleges, the Respondent admits, and I find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

The facts giving rise to the dispute in this proceeding are in the main uncontroverted. The Respondent represented all production and maintenance workers at the Company's Dayton plant pursuant to a contract running from March 21, 1980, to March 20, 1983. On June 14, 1981, employees William Britton, Ralph Miller, and J.B. Monday were working on a so-called latex line at the Company plant. Britton was the crew chief and during certain portions of the shift, Monday was charged with loading tubes into a magazine on a line where they are filled with caulk. During this operation both Britton and Miller, at different times, noticed that Monday was bending the tubes against the magazine before feeding them into the line. As a result of the tubes being bent, the machine was jammed and the caulk "puked" over the floor. The assembly line was then shut down and both Britton and Miller were forced to clean the caulk from the floor. According to the undisputed testimony the line was shut down for approximately 40 minutes causing a loss to the Company of about $1,000.

Britton testified that he pulled out 10 tubes from the machine which were bent over at the ends, and that he

called over Steven Dunlevy, the supervisor, and showed him some of the bent tubes. Miller at one point also noticed some bent tubes which he pointed out to Britton, stating that of coure he knew J.B. is bending the tubes. The following night, June 15, Britton was called to the office and told by Dunlevy that before any discipline can be taken, he and Miller would have to sign a statement. Britton stated that he asked Miller whether he would be willing to sign a statement and then both of them went to the office and signed a statement which was witnessed by Dunlevy and another supervisor, Williams. The statement in effect said that Britton and Miller observed Monday smashing tubes and feeding them into the magazine causing the machine to spill. This resulted in excessive downtime and damage to finished goods.

The Company's plant rules provide: "Any employee who willfully destroys another employee's personal property or destroys company property will be discharged." Both Britton and Miller were aware of this and in addition Dunlevy advised them that their signing a statement could result in Monday's termination. However Britton and Miller were told there would be no pressure on them from management to sign a statement. Of course, the end result was that Monday was discharged.

The Union's bylaws provide for the filing of charges against employees, "engaging in conduct detrimental to the welfare and interests of the membership of the Oil, Chemical and Atomic Workers International Union." Charges were filed on August 6, 1981, against Britton and Miller alleging that they had violated this provision of the bylaws by signing an "unsolicited statement claiming that a fellow union member, J.B. Monday, was intentionally putting bad tubes in the filler of the latex line." It further alleged that as a result of such statement Monday was discharged. At the hearing herein, the parties stipulated that the internal charges were duly filed and processed according to the rules of the Union and that the procedures conducted were fair and regular. As a result of the union proceedings, fines in the amount of $300 and 2 weeks' pay were levied against Britton and Miller on October 1, 1981. In addition the General Counsel has stated that no contest as to the reasonableness of the fine is involved in this matter. Britton and Miller appealed these fines to the International union to no avail.

From the facts as detailed above and the stipulation reached at the hearing, the issue is simply whether the Respondent, by fining Britton and Miller for alleged violations of the union rules, violated Section 8(b)(1)(A) of the Act.

B. *Analysis and Conclusion*

In *Scofield v. NLRB*, 394 U.S. 423 (1969), the Supreme Court found that the right of a union under Section 8(b)(1)(A) of the Act "to prescribe its own rules with respect to the acquisition or retention of membership therein," included the right of the union to enforce such rules by fines or expulsion, if necessary. However the Court also said that a rule may not be so enforced if it "invades or frustrates an overriding policy of the labor law." In such case, enforcement would violate Section 8(b)(1)(A) of the Act. See *NLRB v. Shipbuilders*, 391 U.S. 418 (1968).

A prime example of such overriding national policy is that set forth in the so called *Steel Workers* trilogy in which the Supreme Court described the arbitration and grievance machinery as being "at the very heart of the system of industrial self-government." *Steel Workers v. Warrior & Gulf Co.*, 363 U.S. 574, 581 (1960). It emphasized that the "grievance procedure is, in other words, a part of the continuous bargaining processes." The Board has honored these principles by finding violations of Section 8(b)(1)(A) in cases where a union has fined members for appearing and testifying in arbitration proceedings in a manner contrary to the interest of other members.[1]

Moreover this ruling is not confined only to the arbitration hearing itself but rather extends to the whole process of the grievance machinery. Thus the Board, in a case more closely aligned to the instant case, affirmed the decision of an administrative law judge finding that a union violated Section 8(b)(1)(A) for charging, trying, and fining an employee-member who had given a statement to the employer during the pendency of a grievance. *Amalgamated Transit Union Division 825 (Transport of New Jersey)*, 240 NLRB 1267 (1979). Thus, it recognized that the policy extends to an action which occurs prior to the actual arbitration hearing, the filing of the grievance which starts the process. Here we are involved with an action occurring a step before the actual filing of the grievance, which is an employer's preparation for the filing of a potential grievance. The Respondent herein, having discharged an employee for a serious violation of a work rule which specifies discharge as a penalty, could reasonably expect that a grievance would be filed and, absent settlement, be processed to the status of an arbitration hearing. In this connection it is noted that the Respondent's supervisors, who solicited and obtained the statement from Britton and Miller, advised them before they signed that Monday would undoubtedly be discharged and that their statement would be used in connection with any grievance or proceeding that followed from the discharge.

The Respondent primarily relies on *Communications Workers Local 5795 (Western Electric)*, 192 NLRB 556 (1971). In that case, an employee reported to the company that a fellow employee had a bottle of an alcoholic beverage in a drawer of the machine on which she was working, contrary to a company rule. As a result the union fined the member who reported the incident, the Board dismissed the complaint which had been issued against the union. The case is distinguishable in several ways. In *Local 5795*, the employee not only informed the company of the presence of the alcoholic beverage but also gave the name of the employee who owned it. The Board found that application of the union's rule in the circumstances did not infringe upon any statutory labor policy. In the instant case the supervisor was called to the latex by Britton and was shown the damaged tubes. Moreover it may well be argued that Britton as crew

[1] *Teamsters Local 557 (Liberty Transfer)*, 218 NLRB 1117 (1975); *Cannery Workers Local 788 (Marston Ball)*, 190 NLRB 24 (1971).

chief, although not a supervisor within the meaning of the Act, had a duty to keep the line working in proper order. Clearly this would include reporting to management the cause and reason for the stoppage. In addition as pointed out in *Amalgamated Transit Union Division 825*, supra, the Respondent fined Britton and Miller for submitting a signed statement, not for informing on a member.

In sum, I find that by consenting to the Company's request for a signed statement, with knowledge that Monday would likely be discharged, Britton and Miller were cooperating with the grievance machinery, despite the fact that a grievance had not as yet been filed. It would be anomalous to find a violation of the Act where such statement has been given after the filing of a grievance, and yet find no violations when the statement is given before the filing and at a time when it was reasonably clear that the grievance machinery would be invoked by the discharged employee. The policy of favoring the arbitration and grievance machinery over a union's right to fine members for violations of internal rules should reasonably extend to the preparation for the grievance. I find, therefore, that the Respondent violated Section 8(b)(1)(A) of the Act by fining Britton and Miller because they gave a statement to the Company before a grievance was filed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent as set forth in section III, above, occurring in connection with the operations of the Company described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. By charging, trying, and fining William R. Britton and Ralph W. Miller, for providing a statement to the Company in connection with the grievance machinery under the collective-bargaining agreement, the Respondent violated Section 8(b)(1)(A) of the Act.
4. By engaging in the aforesaid conduct the Respondent engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent charged, tried, and fined William R. Britton and Ralph W. Miller in violation of Section 8(b)(1)(A) of the Act, I shall therefore recommend that the Respondent refund to Britton and Miller the full amounts of the fines assessed against them with interest to be computed in the manner set forth in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977). It is also recommended that the fines assessed against Britton and Miller, and any references to the fines be expunged from the Respondent's records.

On the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Oil, Chemical and Atomic Workers International Union, and its affiliate Local No. 7-103, AFL-CIO, CLC, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Charging, trying, fining, or otherwise disciplining William R. Britton and Ralph W. Miller for providing statements to DAP, Inc., in connection with the grievance machinery under the collective-bargaining agreement.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Rescind the fines assessed against William R. Britton and Ralph W. Miller for providing statements to the Company in connection with the grievance machinery under the collective-bargaining agreement, and expunge from its records any reference to that fine.

(b) Refund to William R. Britton and Ralph W. Miller the full amount of the fines assessed against them, with interest, as set forth in the section of the decision entitled "The Remedy."

(c) Post at its offices and meeting halls copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return to said Regional Director sufficient copies of the attached notice marked "Appendix" for posting by DAP, Inc., if willing, in conspicuous places, including all places where notices to employees are customarily posted.

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[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT charge, try, fine, or otherwise discipline William R. Britton and Ralph W. Miller, or any of our members, for providing a statement to the Employer in connection with the grievance machinery under the collective-bargaining agreement.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7.

WE WILL rescind the fines assessed against William R. Britton and Ralph W. Miller for providing a statement to the Company in connection with the grievance machinery under the collective-bargaining agreement and expunge from our records any reference to that fine.

WE WILL refund to William R. Britton and Ralph W. Miller the full amount of the fines assessed against them, with interest.

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION AND ITS AFFILIATE LOCAL NO. 7-103, AFL-CIO, CLC